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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

—§—

No. 359

—§—

JIMMIE JOHNSON,
Petitioner,

vs.

UNITED STATES OF AMERICA

—§—

Petition For Rehearing For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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OPINION BELOW

The opinion of the Court of Appeals is reported at 345 F. 2d. 457.

JURISDICTION

The judgment of the Court of Appeals was entered on May 11, 1965. Petition for rehearing was denied on June 18, 1965. Petition for a Writ of Certiorari was filed July 17, 1965, and denied by the Supreme Court on October 11, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

QUESTION PRESENTED

Was the defendant denied equal protection of the laws inasmuch as the sentence imposed (by admission in the Trial Record) depended upon and was a penalty for defendant's demanding and having a jury trial.

CONSTITUTIONAL PROVISIONS INVOLVED

Article XIV, United States Constitution—Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS

Petitioner was charged in a two Count indictment with accepting wagers as defined by Section 4421 of Title 26 United States Code in Count I and with receiving wagers

for and on behalf of another in Count II. The United States Attorney then moved to dismiss Count II at the conclusion of the Government's case.

Petitioner entered a plea of not guilty and was tried before a jury. Petitioner was then found guilty my the jury after a three day trial of violating Sections 7203, 4411, and 4412 of Title 26, United States Code.

Petitioner was then sentenced to the maximum allowed by the Statute, i.e., One year in prison and a fine of Five Hundred ($500.00) Dollars. All others accused of the same offenses at the same time, after entering pleas of "guilty" received lesser sentences. (See Exhibit A, Infra Page 8, Appendix).

ARGUMENT

The petitioner in his original petition for a Writ of Certiorari did not previously present this argument.

The Trial Court stated in sentencing the accused:

> "I am not unmindful of the fact that here was a fairly extended trial before a jury at the expense of $500.00 to the tax payers. There was no defense put up except an attack upon the credibility of the government witness, Mr. Harris. I think in this case there will be a sentence of one year and a fine of $500.00. The Bond will be refixed at $5,000.00. That will be all." (1a)

An accused is given his choice: either he pleads guilty or faces the risk of getting the maximum penalty allowed.

This is and should be declared an improper practice

inasmuch as it places an accused in a position of fearing to avail himself of his right to be proven guilty. In addition it provides an effective two penalty method of treating the same offense.

Additionally, besides impairing a person's right to a jury trial and providing unequal treatment under the laws, it also deprives the accused of due process in that the general reputation of the Court becomes that of a tool for the prosecution rather than an asylum from inequality.

Even if a person braves that underlying threat of severe punishment and is found guilty by a jury, his penalty is a failure of equal protection because the sentence is discriminatory even though within statutory limits. Here, all others arrested at the same time and sentenced at the same time involving similar crimes received lesser sentences. The difference? The record speaks for itself.

The Supreme Court in Fay v. New York, 332 U. S. 261 (1947) stated:

> "We consider first the clause which forbids a State to 'deny to any person within its jurisdiction the equal protection of the laws'. This prohibits prejudicial disparities before the law. Under it a system which might be Constitutionally unobjectionable, if applied to all, may be brought within the prohibition if some have more favorable treatment. The inquiry under this clause involves defendant's standing before the law relative to that of others accused."

It is conceded that had the Trial Judge said nothing there would be no way of proving this complaint. Yet,

here, there is overt admission on the record that the penalty is based on the fact that a jury trial was had and that this cost the public money.

If, to use an example, a court in imposing a maximum sentence said "because you used a lawyer", or "because you filed a motion", or "because you refused to waive indictment", it would be an obvious violation of an accused's rights; yet this case is similar, and more serious inasmuch as the penalty is severe and discriminatory when viewed relative to others accused.

CONCLUSION

For the foregoing reasons as enumerated in this Petition for Rehearing it is requested that the Writ of Certiorari be granted.

Respectfully submitted,

THOMAS G. PAPPS
Attorney for Petitioner
Suite #1
3955 Martha Avenue
Toledo, Ohio 43612

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

—§—

UNITED STATES OF AMERICA
Plaintiff,
v.
JIMMIE JOHNSON,
Defendant.

CR 63-97

—§—

APPEARANCES:

JOHN MATTIMOE, Esq., Assistant United States Attorney
In behalf of the United States of America,

THOMAS G. PAPPS, Esq.,
In behalf of Jimmie Johnson.

—§—

TRANSCRIPT OF SENTENCING in above cause of action, before the Honorable Frank L. Kloeb, United States District Judge, on Friday, March 13, 1964.

THE COURT: Do you have anything to say, Mr. Johnson?

MR. JOHNSON: No. sir.

THE COURT: The report indicates that in 1960 and until the instant apprehension he was engaged as a used car salesman for Anderson Auto Sales. His commissions were received regularly each week and they averaged a certain sum.

MR. PAPPS: If the Court please, he is still in that business as well as in another sales position at the present time.

THE COURT: I am not unmindful of the fact that here was a fairly extended trial before a jury at the expense of $500. to the taxpayers. There was no defense put up except an attack upon the credibility of the government witness, Mr. Harris.

I think in this case there will be a sentence of one year and a fine of $500. The bond will be refixed at $5,000.00. That will be all.

EXHIBIT A

On March 13, 1964 the following were sentenced on the same charge of NON STAMP WAGERING. ALL PLEAD GUILTY EXCEPT PETITIONER.

Case No.	Name	Sentence
63-113	Michael Nickola	6 Months—$500.00 Time Suspended
63-101	Edward K. Smith	6 Months—$500.00 Time Suspended
63-114	Betty Jane Stewart	6 Months—$500.00 Time Suspended
63-97	Jimmie Johnson	1 Year—$500.00
63-106	Emmanuel Licata	6 Months—$500.00
63-107	Ernest Licata	6 Months—$500.00 Time Suspended
63-111	Paul McDonald	6 Months—$500.00
63-96	Ben Thomas	3 Months—$500.00
63-99	Horqce Newton	6 Months—$500.00 Time Suspended
63-102	Robert L. Smith	6 Months—$500.00 Time Suspended
63-103	Norman Blackman	6 Months—$500.00 Time Suspended
63-104	John Wright	Passed, due to defendent being in hospital
63-105	John H. Spencer	3 Months—$500.00
63-108	Charlie A. Smith	6 Months—$500.00 Time Suspended
63-115	Finous Richard Allen	3 Months—$500.00
63-116	Silas Alexander Means	6 Months—$500.00 Time Suspended